

Immediately, if possible, but no later than ten (10) school days after the date on which the decision to implement a disciplinary change of placement (e.g., 45 day interim alternative educational placement, long-term suspension), the IEP team shall determine whether there is a relationship between the child's disability and the behavior subject to the disciplinary action. If the conduct is determined unrelated to the child's disability, disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which they would be applied to children without disabilities. However, in that event, the child must still receive a free appropriate public education. If the school district initiates disciplinary procedures applicable to all children, the special education and disciplinary records of the child shall be transmitted for consideration by the person or persons making the final determination regarding the disciplinary action. If the parent disagrees with a determination that the child's behavior was not a manifestation of his disability, or with any decision regarding placement in a disciplinary situation involving a disciplinary change of placement (e.g., 45 day interim alternative educational placement, long-term suspension), the parent has the right to request an expedited due process hearing. The IEP team may determine that the behavior of the child was not a manifestation of the child's disability only if the IEP team first considers all relevant information, including evaluation and diagnostic results (including results or other relevant information provided by the parent), observations of the child, the child's IEP and placement, and then determines that:

- A. the IEP and placement were appropriate and special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;
- B. the child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to the disciplinary action; and,
- C. the child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.

In the absence of any of these factors being considered or determinations made, the IEP team must consider the behavior a manifestation of his disability. If the team identified deficiencies in the child's IEP or placement or in the implementation, it must take immediate steps to remedy those deficiencies.

In reviewing a manifestation determination decision, the hearing officer shall determine whether the public agency has demonstrated that the child's behavior was not a manifestation of the child's disability consistent with the listed factors being considered and the listed determinations being made.

#### Dangerous Students (34 CFR 300.521)

If the school district believes the child will injure himself or others, the school district has the right to obtain an expedited due process hearing to seek a 45 day interim alternative educational setting. This procedure may be repeated as necessary. The parent must be notified of the decision to seek this order on the day the decision is made and provided the procedural safeguards statement. At that hearing, the hearing

officer may order a change in placement to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer:

- A. determines the school district has demonstrated by substantial evidence (i.e. beyond a preponderance of the evidence) that maintaining the current placement of such child is substantially likely to result in injury to the child or others;
- B. considers the appropriateness of the child's current placement;
- C. considers whether the school district has made reasonable efforts to minimize the risk of harm in the child's current placement including the use of supplementary aids and services; and,
- D. determines that the interim alternative educational setting **that is proposed by school personnel who have consulted with the child's special education teacher** enables the child to continue to progress in the general curriculum, **although in another setting**, and continue to receive **those** services **[required by his current IEP]** and **modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP and include services and modifications that are designed to prevent the dangerous behavior from reoccurring.**

#### "Stay-put" Under Disciplinary Actions

If the parent requests a due process hearing regarding the discipline action to challenge the interim alternative educational setting or the manifestation determination and when the child is disciplined for weapons, drugs, or because they are a danger to themselves or others, the child will remain in that interim alternative educational setting pending the hearing decision or until expiration of the time period of the interim alternative educational setting, whichever comes first (unless the parties agree otherwise). If school personnel maintain that it is dangerous for the student to be in the current placement (the placement prior to removal to the interim alternative educational setting) during the pendency of the due process proceedings, the school district may request an expedited hearing.

#### Protection for Children Not Yet Eligible for Special Education and Related Services

Students who have not been identified as disabled may be subjected to the same disciplinary measures applied to children without disabilities if the district did not have prior knowledge of the disability. If the school district is deemed to have knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action, the child may assert any of the protections for students with disabilities in the area of discipline. The district has knowledge of the disability when:

- A. the parent has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) that the student needs special education services; or,
- B. the student's behavior or performance has demonstrated a need for services; or,